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Repeal the Limitation on Commission-Related Contributions to the Universal Service Fund (PSC -- Departmentwide)

Bill Agency

[LFB 2007-09 Budget Summary: Page 482, #4]

CURRENT LAW

The universal service fund (USF) provides funding for a variety of programs relating to the accessibility and affordability of telecommunications service. These programs are funded by telecommunications providers through assessments, called contributions, imposed by the Public Service Commission (PSC). The assessments are deposited in the fund, which is administered by a private firm under contract with the Commission.

The fund supports 13 programs, which had appropriations totaling just over $30.6 million annually during the 2005-07 biennium. The PSC administers eight of the programs, and these programs were funded by a single appropriation of $6.0 million annually. State law imposes a $6,000,000 annual limitation on the total amount of contributions to the USF that the Commission may require from telecommunications providers to fund the PSC appropriation.

GOVERNOR

Repeal the $6,000,000 annual limitation on the total amount of contributions to the universal service fund that the Public Service Commission may require from telecommunications providers to fund the Commission's related appropriation. While this provision would remove the contribution limitation, the Governor proposes to continue funding the Commission's appropriation at $6.0 million in both 2007-08 and 2008-09.

DISCUSSION POINTS

1. The universal service fund was created by 1993 Wisconsin Act 496, which also substantially deregulated telecommunications utilities in Wisconsin. The fund was established to ensure that all state residents receive essential telecommunications services and have access to advanced telecommunications capabilities.

2. Of the 13 programs supported by the USF, five of the programs are administered by agencies other than the PSC and expend 80% of the fund's revenues. Their expenditure levels are controlled through the appropriation process, and state law does not otherwise limit the contributions to the fund from telecommunications providers for these programs. The contribution limitation is unique to the eight programs administered by the PSC, which include the:

- **Telecommunications Equipment Purchase Program** -- provides vouchers to disabled persons to be used to purchase special telecommunications equipment;
- **Lifeline Program** -- pays the portion of basic telephone service charges exceeding $15 per month for low-income individuals;
- **Link-Up America Program** -- provides a waiver of certain regulated service charges when low-income residential customers initiate or move telephone service;
- **High Rate Assistance Credit Program** -- reimburses telecommunications providers for credits they extend to residential customers when the total rate for residential service exceeds a specified percentage of the median household income for a county in their service area;
- **Medical Telecommunications Equipment Program** -- provides grants to nonprofit medical clinics and public health agencies to purchase telecommunications equipment that promotes technologically advanced medical services, enhances access to medical care in rural or underserved areas, or enhances access to medical care to underserved populations or persons with disabilities;
- **Public Interest Pay Telephone Program --** provides subsidies to telecommunications companies for the operation of pay telephones in locations where there is a public need even though the telephones are not commercially feasible;
- **Access Program or Project by Nonprofit Groups** -- provides grants to nonprofit groups to partially fund programs or projects that facilitate affordable access to telecommunications and informational services; and
- **Two-Line Voice Carryover** -- provides a second telephone line to certain hearing- or speech-impaired customers who use telecommunications relay service.

3. For a number of years, the fund's PSC expenditures failed to meet expectations by a considerable margin, which led to an accumulated balance in the fund. To reduce the balance, the PSC eliminated the assessments for the PSC-operated programs in 1998-99 and 1999-00. In August, 2000, the PSC reinstated assessments for PSC-operated programs, but a year later, 2001 Wisconsin Act 16 limited the assessments to $5.0 million in 2003-04 and $6.0 million in 2004-05 and each year thereafter. Since 2001-02, expenditures have increased in response to promotional programs

and due to new or expanded programs. After the PSC's USF appropriation was increased to $6.0 million in 2004-05, actual expenditures have rounded to the appropriated amount.

4. State law requires the Commission to obtain an audit of the USF each year. In 2004, the Legislative Audit Bureau (LAB) reported that 2001-02 and 2002-03 expenditures would have exceeded the limit on assessment levels if outstanding encumbrances had been included. In 2003-04, the Commission began taking preemptive action to ensure that expenditures remained within budgeted levels. Since then, the PSC has deferred payment requests from telecommunications providers for services under two programs, reduced benefits to people with disabilities under another program, and did not provide grants in 2004-05 under a fourth program and in 2005-06 under a fifth program. Also, the PSC is in the process of drafting administrative rules that will assist it in better managing costs in several programs.

5. The LAB's 2005 audit report contains language warning that if "growth in program demand and expenditures continues, the Legislature may be asked to reconsider the statutory limits on the PSC's annual assessment levels or to eliminate some programs." The 2006 audit report repeats this warning and adds, "beyond the steps it is already taking, the PSC's ability to respond quickly to future cost increases without significantly affecting its Universal Service Fund programs may be limited."

6. State law requires the PSC to appoint a Universal Service Fund Council to advise the Commission on the administration of the fund. A majority of the Council's members are required to be representatives of consumers of telecommunications services, although representatives of telecommunications providers also serve on the Council. Recently, the Council recommended repeal of the $6 million limit on USF assessments because the limit impedes the "delivery of services to disadvantaged persons."

7. The Council's recommendation is contingent on other conditions including: (a) granting the PSC flexibility to base its funding on mechanisms other than assessments on intrastate revenues; (b) imposing assessments on wireless telecommunications providers now exempt from assessments; and (c) repealing statutory provisions regarding the display on customer bills of surcharges and adjustments pertaining to USF contributions. The Legislature could adopt statutory changes that would address each condition. However, the Federal Communications Commission (FCC) is considering revisions to the assessment procedures that are used to fund the federal USF, and the PSC has an open docket (# 1-AC-198) related to its USF administrative rules that has sought testimony regarding "whether assessment of wireless providers should be resumed." The Legislature could postpone its consideration of the first two conditions until after these administrative decisions are made.

8. The third condition relates to a current law provision that permits the USF assessment for non-PSC programs to be recovered by telecommunications providers as a surcharge that is displayed on customer bills. The surcharge procedure is not extended to the USF assessment for the PSC programs. In addition, the procedure is limited to local exchange service, so it could not be used by wireless providers if the PSC eliminates their exemption from USF assessments. The current law provision authorizing a USF surcharge could be amended to permit all

telecommunications providers subject to USF assessments to recover the assessments for all USF programs through a surcharge displayed on their customers' bills.

9. While the Governor proposes to remove the $6 million limit on contributions to the USF, the bill would not increase the PSC's appropriation for USF programs. PSC staff indicate that the proposal is not intended to result in an increase in the USF appropriation, but rather is intended to improve the Commission's flexibility to respond to unexpected fluctuations in USF expenditures. In prior years, expenditures have fluctuated because some telecommunications providers have submitted reimbursement requests covering multiple years, causing the PSC to defer some payments. Also, the Telecommunications Equipment Purchase program, which is the largest of the eight PSC-administered programs, permits eligible individuals to receive vouchers only once every three years. Finally, unexpected costs could occur in the Lifeline and Link-Up America programs because the administration of these programs is governed, in part, by federal requirements. If future fluctuations occur, the Commission would be able to respond by seeking adjustments to the USF appropriation through the Committee's s. 13.10 procedure, provided there was no limit on contributions.

10. The Commission's flexibility to respond to expenditure fluctuations could also be enhanced by changing the program's appropriation type. Currently, the USF appropriation is an annual appropriation, so the Commission can expend only up to the amount in the appropriation schedule and only for the designated fiscal year. At the fiscal year's end, any unencumbered balances revert to the fund. Balances in the fund cause adjustments to surcharges in the succeeding year to ensure that $6 million in funding is available to fund the PSC's USF appropriation. If the appropriation was converted to a continuing appropriation, the Commission would be allowed to expend amounts appropriated in the designated fiscal year plus the unencumbered balance in the appropriation account from the previous fiscal year.

ALTERNATIVES TO BILL

1. Approve the Governor's recommendation.

2. Modify the current law provision authorizing a USF surcharge to permit all telecommunications providers subject to USF assessments to recover the assessments for all USF programs through a surcharge displayed on their customers' bills. (This alternative may be combined with any of the other alternatives.)

3. Convert the Commission's universal service fund appropriation from an annual appropriation to a continuing appropriation. (This alternative may be combined with any of the other alternatives.)

4. Delete provision.

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